

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 28.10.2015

1. CRM-M-21583-2012

Rajbir Singh and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

2. CRM-M-22329-2012 (O&M)

Jasdev Singh

... Petitioner

Vs.

State of Punjab

... Respondent

3. CRM-M-22557-2012

Surinder Pal Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

4. CRM-M-28125-2012 (O&M)

Bhagwant Singh and others

... Petitioners

Vs.

State of Punjab

... Respondent

5. CRM-M-28633-2012 (O&M)

Ramandeep Singh

... Petitioner

Vs.

State of Punjab

... Respondent

6. CRM-M-28689-2012 (O&M)

Harinder Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. T.S. Sangha, Senior Advocate with
Mr. D.D. Sharma, Advocate
for the petitioners (in CRM-M-21583-12 & CRM-M-28689-12)

Mr. Bipan Ghai, Senior Advocate with
Mr. Vishavjit S. Virk, Advocate
for the petitioners. (in CRM-M-22557-2012)

Mr. R.S. Rai, Senior Advocate with
Mr. Rajeev Anand, Advocate
for the petitioner (in CRM-M-22329-12 & CRM-M-28633-12).

Mr. S.S. Chadha, Advocate
for the petitioners (in CRM-M-28125-12)

Mr. M.C. Berry, Addl. AG, Punjab.

Mr. A.P.S. Deol, Senior Advocate with
Mr. H.S. Mavi, Advocate for the complainant
(in CRM-M-22329-12, CRM-M-28633-12 & CRM-M-28125-12)
for respondent No.2
(in CRM-M-28689-12, CRM-M-21583-12 & CRM-M-22557-12)

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

This is yet another glaring example of blatant misuse of powers by the investigating agency, while conducting repeated re-investigations, totally changing the nature and scenario of the case, completely exonerating one set of accused persons and implicating another group of accused persons, that too without seeking permission of the Court, for the reasons best known to the investigating agency and prosecuting agency of the respondent-State.

This bunch of six identical petitions bearing CRM-M-21583-2012 (Rajbir Singh and others Vs. State of Punjab and another), CRM-M-22329-2012 (Jasdev Singh Vs. State of Punjab), CRM-M-22557-2012 (Surinder Pal Singh Vs. State of Punjab and another), CRM-M-28125-2012 (Bhagwant Singh and others Vs. State of Punjab), CRM-M-28633-2012 (Ramandeep Singh Vs. State of Punjab) and CRM-M-28689-2012 (Harinder Singh Vs. State of Punjab and another) filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), are being decided together as all these petitions are directed against the same order arising out of similar set of facts. However, for the facility of reference, facts are being culled out from Surinder Pal Singh's case bearing CRM-M-22557-2012.

This matter has a long and chequered history. The facts necessary for disposal of these petitions are that FIR No.159 dated 02.07.2004 was registered by Ramandeep Singh, SI (SHO), Police Station Kharar under Sections 302, 307, 148, 149, 109 & 120-B of the Indian Penal Code ('IPC' for short) at 4.50 PM, qua an occurrence stated to have taken place at 3.15 pm at Anaj Mandi (Grain Market), Kharar. SI Ramandeep Singh claimed himself to be the eyewitness of the occurrence. Incident took

place during the alleged preparation of a public meeting which was scheduled to be addressed by some political leaders of the respondent No.1-State of Punjab. One faction was led by Kiranbir Singh Kang and the second faction was led by Rajbir Singh Padial. There was a free fight. Members of both the factions fired at each other. One Harbeer Singh from the faction of Kiranbir Singh Kang died. Similarly, from the other faction led by Rajbir Singh, one Paramjit Singh died. Three persons received injuries including Kiranbir Singh Kang himself.

After conclusion of the investigation, report under Section 173 (2) Cr.P.C. dated 08.08.2004 (Annexure P-2), available at page 82 of the file, was presented to the learned Court of competent jurisdiction. Eleven persons from the faction of Kiranbir Singh Kang and six persons from the faction of Rajbir Singh were made the accused and challaned. Charges were framed vide order dated 28.02.2007 (Annexure P-3) against Kiranbir Singh Kang etc., available at page 92 of the paper book. Similarly, vide order dated 28.02.2007 (Annexure P-4), charges were framed against Rajbir Singh etc., at page 97 of the paper book.

In the meantime, Kiranbir Singh Kang filed CWP No. 10665 of 2004 before this Court. Orders at Annexure P-5 and P-6 were passed by this Court whereas order (Annexure P-7) was passed by the Hon'ble Supreme Court. A bare perusal would show that these orders were passed by this Court directing the respondent authorities to secure the life and liberty of the petitioners therein.

In the interregnum, Director General of Police constituted a Special Investigation Team ('SIT' for short) vide order dated 23.03.2007 but

without seeking permission of the Court, in spite of the fact that charges had been framed and prosecution evidence was going on. Thereafter, report under Section 173 (8) Cr.P.C. dated 17.07.2007 was submitted before the Court on 02.09.2007 (Annexure P-8) at page 121 of the paper book, wherein petitioner Surinder Pal Singh was not found to be an accused as pointed out at page 178 of the paper book. Petitioner was Senior Superintendent of Police, Rupnagar, at that time. It seems that the learned Magistrate found the supplementary challan under Section 173 (8) Cr.P.C. to be the result of a re-investigation and the same was rejected, having been found based on conducting the re-investigation without permission of the Court. This order was passed by the learned Magistrate on 13.02.2008 (Annexure P-10).

Having been failed in its attempt, while submitting the abovesaid supplementary challan under Section 173 (8) Cr.P.C. and rejection thereof, vide abovesaid order, the prosecuting agency of respondent State thought it appropriate to invoke the provisions of Section 321 Cr.P.C., seeking withdrawal of prosecution qua one set of the accused persons. However, this application moved by the prosecution came to be dismissed by the learned Sessions Judge, Ropar, vide a detailed and self-contained order dated 31.01.2011 (Annexure P-11), running into more than 25 pages. This order dated 31.01.2011 (Annexure P-11) came to be challenged by the respondent-State before this Court by way of CWP No.6328 of 2011 which is stated to be pending, after having been admitted for regular hearing. Thereafter, on the basis of a complaint allegedly given by Kiranbir Singh Kang, alleging exactly the same allegations, DDR No.19 dated 12.09.2011 was registered and based on that, another SIT was constituted, who prepared the impugned

report under Section 173 (8) Cr.P.C. dated 30.09.2011 (Annexure P-14) at page 304 of the paper book.

Vide this report under Section 173 (8) Cr.P.C. (Annexure P-14), investigating agency made all the investigating officers including Senior Superintendent of Police, Surinder Pal Singh and Rajbir Singh etc., total being 21 persons, as accused including six persons who were accused earlier also, however, giving clean chit to the 11 accused who belonged to the faction of Kiranbir Singh Kang. In view of this impugned report (Annexure P-14), accused persons from the faction of Rajbir Singh were sought to be held liable even for the second murder about which the 11 accused from the faction of Kiranbir Singh Kang were accused, as per originally filed police report under Section 173 (2) Cr.P.C.

However, this second supplementary challan under Section 173 (8) Cr.P.C. again came to be rejected by the learned Magistrate vide order dated 10.12.2011 (Annexure P-15). After a detailed discussion on the mandatory requirement of prior permission of the Court, before conducting fresh investigation or re-investigation, referring to more than one relevant judgments on the subject, the supplementary challan under Section 173 (8) Cr.P.C. was rejected, vide order dated 10.12.2011. This order came to be challenged by the respondent-State before the learned Court of Sessions, but for the reasons best known to it, the revision petition was withdrawn vide order dated 04.04.2012 (Annexure P-16).

Interestingly, the same second supplementary challan dated 30.09.2011 (Annexure P-14) which had been rejected by the learned Magistrate vide detailed order (Annexure P-15) and revision thereagainst

was withdrawn by the prosecution vide order dated 04.04.2012 (Annexure P-16), was sought to be presented before the learned Sessions Judge on 15.05.2012 but on the request of learned Public Prosecutor, case was adjourned to 29.05.2012 for producing supplementary challan. However, it seems that during the course of the day on 15.05.2012 itself, the supplementary challan was presented and the learned Sessions Judge returned the said supplementary challan for its presentation before the learned Illaqa Magistrate. These two orders of even date i.e. 15.05.2012 passed by the learned Sessions Judge, Ropar are available on the case file at page 350-351 of the paper book.

It seems that a factually incorrect and misleading statement was made before the learned Sessions Judge, on behalf of the respondent-State on 07.07.2012, to the effect that the supplementary challan has been presented before the learned Magistrate and nothing was being done at the hands of the learned Illaqa Magistrate, whereas not only the said supplementary challan had already been rejected but even the revision filed by the respondent-State had already stood withdrawn way back on 04.04.2012. Having been misled, the learned Sessions Judge issued notice to the Court of learned Illaqa Magistrate to send the status report qua the said supplementary challan, with detailed reply as to why such a long date has been given when the challan has already been presented. This order was passed by the learned Sessions Judge on 10.07.2012 (Annexure P-18), adjourning the case for 17.07.2012 for the report from the learned Illaqa Magistrate.

In view of the abovesaid order dated 10.07.2012 (Annexure P-18) passed by the learned Sessions Judge, impugned order dated 12.07.2012

(Annexure P-19) came to be passed by the learned Sub Divisional Judicial Magistrate, Kharar, thereby accepting the same supplementary challan and also issued non-bailable warrants against the accused, as well as sending the status report regarding the same, to the learned Sessions Judge in reply to abovesaid order dated 10.07.2012. Hence these petitions.

Notice of motion was issued and interim directions were issued.

Learned Senior Counsel for the petitioner (s) submits that the impugned supplementary challan under Section 173 (8) Cr.P.C. as well as the impugned order accepting the same in all these petitions were without jurisdiction. The impugned supplementary challan was based on a re-investigation conducted by the investigating agency, which could not have been conducted without prior permission of the Court. Admittedly, no prior permission of the Court was sought by the investigating agency in the present case. Regarding the impugned orders passed by the learned Illaqa Magistrate, learned Senior Counsel for the petitioner (s) would contend that since the same supplementary challan had already been rejected and revision filed by the respondent-State against said order had already been withdrawn, there was no scope for the learned Magistrate to review the earlier orders, while accepting the impugned supplementary challan. In support of his contentions, learned Senior Counsel places reliance on the following judgments: -

1. ***Mostt. Simrikhia Vs. Smt. Dolley Mukherjee, 1990 (2) SCC 437. (SC)***
2. ***K. Chandrasekhar Vs. State of Kerala and others in Criminal Appeal No.489 of 1997, decided on 29.04.1998. (SC)***
3. ***Hari Singh Mann Vs. Harbhajan Singh Bajwa, 2001 (1) SCC***

169. (SC)

- 4. Surendra Singh Vs. State of Bihar, 2005 (12) SCC 361. (SC)*
- 5. Guddie Madanjit Achreja Vs. Union of India and others, 2006 (3) RCR (Crl.) 808 (P&H).*
- 6. Major Gurjinder Singh Benipal Vs. State of Punjab, 2012 (4) RCR (Crl.) 743 (P&H).*

Learned Senior Counsel for the petitioner (s) pray for quashing the impugned supplementary challan under Section 173 (8) Cr.P.C. and the impugned orders passed by the learned Magistrate accepting the said supplementary challan, by allowing all these petitions.

On the other hand, learned counsel for the State as well as learned Senior Counsel for private respondents submit that the impugned supplementary challan under Section 173 (8) Cr.P.C. was not the result of an action without jurisdiction. They submit that in fact it was not the result of any re-investigation, but the investigating agency conducted only further investigation for which prior permission of the Court was not required. Learned counsel for the respondents further submit that since the police report under Section 173 (8) Cr.P.C. was not based on an action without jurisdiction, the learned Magistrate also rightly accepted the same on its resubmission after the order passed by the learned Sessions Judge and in this view of the matter, the impugned order passed by the learned Illaqa Magistrate would not amount to review.

Learned Senior Counsel for respondent No.2 in CRM-M-21583-2012 (Rajbir Singh Vs. State of Punjab and another) also submitted that Annexure R-3 was the application for intervention, moved before the Hon'ble

Supreme Court by Sajjan Singh in SLP (Civil) No.18731 and 18732 of 2006 (State of Punjab and others Vs. Kiranbir Singh Kang and another) which would show that petitioners were participating in the proceedings throughout. It would be immaterial that the said application for intervention could not be decided on merits because the State of Punjab withdrew its abovesaid SLP filed against the orders dated 17.05.2006 passed by this Court in abovesaid CWP No.10665 of 2014. He also refers to an order dated 11.02.2011 passed by this Court in CWP No.10665 of 2014 (Annexure A-10) at page 190 of the paper book of CRM-M-21583-2012 to contend that it would amount to implied permission by the Court. To buttress his submissions, learned Senior Counsel for respondent No.2 places reliance on two judgments of the Hon'ble Supreme Court in **State of A.P. Vs. A.S. Peter, 2008 (2) SCC 383** and **Rama Chaudhary Vs. State of Bihar, 2009 (6) SCC 346**. Learned counsel for the State also submits that it was not a case of re-investigation but only further investigation was conducted. The lapses on the part of the investigating agency as well as the prosecuting agency of the respondent-State were not intentional but only because of bonafide reasons. He also submits that the impugned order passed by the learned Magistrate does not amount to review, in the peculiar facts and circumstances of the case. They pray for dismissal of all these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, referred to hereinabove, petitioners have been found entitled for invoking the

inherent jurisdiction of this Court under Section 482 Cr.P.C., for quashing the impugned supplementary challan and the impugned orders passed by the learned Magistrate accepting the same. These have been found the fit cases warranting interference at the hands of this Court, while exercising its jurisdiction under Section 482 Cr.P.C., so as to prevent any further abuse of process of Court and also to secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that after presentation of police report under Section 173 (2) Cr.P.C. before the learned Court of competent jurisdiction, the investigating agency never sought the permission of the learned trial Court for carrying out either further investigation or re-investigation, nor any such intended action on the part of the investigating agency was brought to the notice of the Court. It is also a matter of record that when the first supplementary challan under Section 173 (8) Cr.P.C. was rejected by the learned trial Court vide order dated 13.02.2008, at Annexure P-10, granting liberty to the investigating agency to file another supplementary report under Section 173 (8) Cr.P.C., but only after seeking adequate permission from the trial Court, neither said order dated 13.02.2008 (Annexure P-10) was challenged either by the respondent-State or respondent No.2 nor any permission from the learned trial Court was sought.

Relevant observations made by the learned Illaqa Magistrate at page 242-243 of paper book, in the operative part of the order dated 13.02.2008 (Annexure P-10), which deserves to be noticed here, read as under: -

“But, it stood admitted by the learned APP for the State during

*the arguments that the trial was also pending in the Court of Sh. G.S. Saran, learned Additional District & Sessions Judge, Rupnagar, where after the framing of charge, evidence of the prosecution was being recorded, but no such permission had ever been sought by the prosecution or the police from the learned trial Court to make further investigation for some fresh facts of any which had come to their knowledge. Since the present file does not reflect any information to the trial Court nor any formal permission having been granted by the trial Court which could have been most desirable in the present set of circumstances as observed by the **Hon'ble Supreme Court of Indian in "Hasanbhai Valibhai Quresh Versus State of Gujrat and others, 2004 (2) Recent Criminal Reports 463 (S.C.)** with special reference to law already laid down by the Hon'ble Apex Court in "Om Parkash Narang and another Vs. State (Delhi Administration), AIR 1979 SC 1791. Resultantly, in the absence of said information or permission of the trial Court, the present report of innocence in favour of accused namely Satinder Singh, Sewa Singh, Harjit Singh, Kulbir Singh and Harsimran Singh is hereby rejected. However, investigating agency is at liberty to file another supplementary report under Section 173 (8) Cr.P.C. after seeking adequate permission from the trial Court where trial is pending."*

Having failed in its abovesaid attempt by presenting a supplementary challan under Section 173 (8) Cr.P.C., based on a re-

investigation without the prior permission of the Court, the prosecuting agency sought to invoke the provisions of Section 321 Cr.P.C. for withdrawal of prosecution against the accused persons, to whom the investigating agency wanted to give a clean chit by way of abovesaid supplementary challan under Section 173 (8) Cr.P.C., which was rejected by the learned Magistrate vide abovesaid order dated 13.02.2008. However, this application moved by the prosecution under Section 321 Cr.P.C. also came to be dismissed by the learned Sessions Judge by passing a very detailed and self-contained order dated 31.01.2011 (Annexure P-11) from page 244 to 281 of the paper book.

The relevant observations made by the learned Sessions Judge in his order dated 31.01.2011, read as under: -

“The matter of appreciating the evidence is within the purview of the Court. The investigating agency just to collect the evidence and put the same before the Court and as such written submissions advanced on behalf of witness Surinder Singh has forced that if at all the reports submitted by SIT in favour of accused, then those reports can be proved in defence for enabling the Court to arrive at exact conclusion. As the fight took place between two warring local political factions in show of strength for having personal political gains over the adversary and as such the confidence of the public will stand shattered in the administration of justice, in case just on the strength of supplementary report submitted under Section 173 (8) Cr.P.C., the public prosecutor allowed to withdraw from

prosecution, particularly when the said SIT got constituted immediately after change of power in State of Punjab in 2007 and not before that. It was the party of Sh. Parkash Singh Badal, that came in power in February/March, 2007 and that is why the investigation got marked immediately thereafter from DGP. Kiranbir Singh Kang is supporter and loyal of present Chief Minister as per allegations levelled by Surinder Singh through written arguments and if those allegations are correct, then this means prima facie that SITs got constituted by exercising the political influence. As and when two murders committed in broad day light in gathering of 125/150 persons getting ready for holding rally in honour of State or National Leaders by two bigwig political opponents of local level, then the adjudication by the Court on the material produced by the investigating agency is essential, otherwise the credibility of the judicial system or the faith of the public in judicial system will stand eroded, and as such the application filed by the Public Prosecutor under Section 321 Cr.P.C. for pleasing the political mentors of Kiranbir Singh Kang cannot be said to be filed genuinely. Being so, the Court must withheld the sanction for withdrawal from prosecution by the Public Prosecutor. Besides after scrutinizing the sequence of events, it is made out that actually party of Kiranbir Singh Kang after knocking at door of higher Courts did not get the final adjudication at all qua getting re-investigation conducted from CBI or any other

investigating agency on orders of the Court. However, during pendency of writ petitions before Hon'ble High Court for clarification of the order of protection passed by Hon'ble High Court on 07.12.2004, the investigation got marked from DGP Punjab Chandigarh to the SIT without getting permission from any Court. When the higher Courts were already seized of the matter, qua entrusting the investigation to independent agency like CBI, then action of obtaining orders from DGP for constitution of SIT immediately on change of government in State of Punjab itself speaks of the exertion of influence by accused party under protection of their mentors enjoying power.

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... So, virtually the SIT could not get exact version from the adversary party qua manner of taking place of occurrence. If that be the position, then faith of sufferers in the judicial system will also stand shattered if the report of the SIT accepted, though the same may be lopsided, being not based on consideration of versions that may be given by adversary of the accused of this case. Some of the examined police officials like DSP Jasdev Singh, Sarabjit Singh Pander claimed as if they were not present at the spot of occurrence. If these persons were not present at the spot of occurrence at the time of occurrence, then certainly they cannot say anything exactly about the presence of SI Ramandeep Singh SHO, P.S. Kharar on the spot. When two cross-versions are given qua the same occurrence by

same witnesses like SI Ramandeep Singh, then version of SI Ramandeep Singh cannot be taken as blatant lie qua his presence ex-facie in one case, but his presence on the spot to be accepted in other case. Double standard not permissible and as such in view of pendency of criminal case qua this occurrence itself against party of Rajbir Singh Padiala and others, it has to be held that in case withdrawal from prosecution in this case ordered, without assessing the version given by adversary or the witnesses, then grave in justice will be caused in view of violation of principles of natural justice even, because one party will stands condemned unheard.

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So, considering all the relevant material available on the record, the withdrawal from prosecution will not be conducive to the interest of public or to the administration of justice. Being so, on the analogy of law laid down in the above cited cases, I am of the confirmed opinion that if is a fit case in which sanction for withdrawal from prosecution should be withheld so that real justice may be done after hearing both the sides.

As a sequel of my above discussion, application under Section 321 Cr.P.C. filed by Public Prosecutor for withdrawal from prosecution stands dismissed.”

It is pertinent to note here that the abovesaid order dated 31.01.2011, passed by the learned Sessions Judge, dismissing the application for withdrawal from prosecution moved by the prosecution under Section

321 Cr.P.C., was not challenged by either the respondent-State or any other aggrieved persons-accused. Instead of challenging the abovesaid order, the investigating agency proceeded on a novel method, by taking a complaint from one of the aggrieved accused, who did not challenge the abovesaid order dated 31.1.2011 passed by the learned Sessions Judge. On the basis of this complaint, DDR No.19 dated 12.09.2011 was registered and SIT was constituted. DDR No.19 dated 12.09.2011 was based on exactly the same allegations levelled by Kiranbir Singh Kang which had been discussed in minute details by the learned Sessions Judge, while dismissing the application of the prosecuting agency under Section 321 Cr.P.C., seeking withdrawal of prosecution against Kiranbir Singh Kang and other accused from his faction. This DDR No.19 dated 12.09.2011 is Annexure P-13.

The investigating agency through SIT started the fresh investigation again and prepared the impugned second supplementary challan under Section 173 (8) Cr.P.C. in the form of Annexure P-14 dated 30.09.2011. However, on presentation of this second supplementary challan, the same again came to be rejected by the learned Illaqa Magistrate vide self-contained order dated 10.12.2011 (Annexure P-15) and that too, after discussing the relevant case law on the subject.

The relevant observations made by the learned Illaqa Magistrate in his order dated 10.12.2011, as contained in para 11 to 13 thereof, at page 342 to 344 of the paper book, read as under: -

“Here in the present case the Court after application of mind has already committed the case to the Court of Sessions and directed some of the accused persons to stand for trial before

the Court of Sessions and in the said case. Charge has already been framed against the accused persons. Therefore, the judgment referred above by the learned APP for the State cannot be said to be applicable to the facts in hand.

The contention of the learned APP for the State that police can make further investigation without permission of the Court and put fresh challan and it is for the Court to decide whether there is sufficient evidence for facing trial against the accused. This contention of the learned APP for the State has not impressed me in view of the fact that when the Court of Sessions had already taken the cognizance of offences under Section 193 Cr.P.C., any further document or material in respect of the offence, for which the Sessions Court has taken cognizance, has to be placed before the learned Sessions Judge. The investigating officer has no authority to place any document in respect of the said case before a Magistrate or before any other Court.

Therefore, in view of the discussion made above, the report under Section 173 (8) of Cr.P.C. presented by the police is hereby rejected and returned to the police. However, investigating agency is at liberty to present the supplementary report before the appropriate Forum, after seeking adequate permission from the learned trial Court.”

The abovesaid order dated 10.12.2011 (Annexure P-15) passed by the learned Illaqa Magistrate, rejecting the second supplementary challan,

was challenged by the respondent-State before the learned Court of Sessions, however, the revision petition was got dismissed as withdrawn vide order dated 04.04.2012 passed by the learned Additional Sessions Judge, Mohali, for the reasons best known to the respondent-State.

The relevant part of the heading and the order passed, reads as under: -

“Revision against the order dated 10.12.2011, passed by the Court of Muneesh Arora, Sub Divisional Judicial Magistrate, Kharar vide which he has rejected the report under Section 173 (8) presented in the abovesaid FIR with request to set aside the same and to order to take cognizance of the same and be committed to the Court of Sessions for final decision along with the challan already presented and pending in the Court of Sessions Judge, Ropar.

State

Vs.

Rajbir Singh Padiala

Statement of Shri L.S. Hundal, Addl. P.P., for the State.

State that I do not want to proceed further with this revision petition and the same may be allowed to withdraw.

R.O. & A.C.

Sd/-

Dated: 4.4.2012

(Rajinder Aggarwal)

ASJ Mohali.”

Interestingly, the supplementary challan which had been rejected by the learned Illaqa Magistrate vide abovesaid order dated 10.12.2011

(Annexure P-15) and revision against which filed by the respondent-State but withdrawn thereafter vide abovesaid order dated 04.04.2012 (Annexure P-16), same supplementary challan under Section 173 (8) Cr.P.C. was sought to be presented before the learned Sessions Judge, Ropar on 15.05.2012, but when the supplementary challan was not produced, the case was adjourned to 29.05.2012 by the learned Sessions Judge, Ropar by passing the following order: -

“Present: PP for State.

All the accused on bail with counsel.

Accused Navneet Kaur PO.

Supplementary challan not produced. On request of learned P.P., case is adjourned to 29.5.2012 for producing supplementary challan.

Sd/-

Sessions Judge, Ropar

15.5.2012.”

It seems that the investigating agency as well as the prosecuting agency of the respondent-State had a second thought on 15.05.2012 itself and presented the supplementary challan before the learned Sessions Judge, Ropar and on presentation thereof, learned Sessions Judge also did not pre-pone the date of hearing and while ignoring the abovesaid order, passed the following order on 15.05.2012 itself: -

“State Versus Rajbir Singh etc.

15.5.2012 Present: PP for State.

Supplementary challan be returned for presentation

before Illaqa Magistrate.

Sd/-

Sessions Judge, Ropar

15.5.2012.”

Thereafter, the prosecuting agency of the respondent-State proceeded on a wholly misconceived approach by making a factually incorrect statement before the learned Sessions Judge on 10.07.2012 and on the basis thereof, learned Sessions Judge, Ropar passed the following order: -

“State Versus Jugraj Singh etc.

Present: PP for State.

Accused Navneet Kaur PO.

Remaining accused on bail except accused Kiranbir Singh Kang.

Accused Kiranbir Singh Kang has not come present. An application seeking exemption from personal appearance on his behalf is moved. Heard. In view of the contents mentioned in the application personal appearance of accused Kiranbir Singh Kang is exempted for today only.

Supplementary challan not received. It is brought to my notice that the said supplementary challan has been presented in the Court of Mrs. Rashmi Sharma, Sub Divisional Judicial Magistrate, Kharar and the same has been fixed for 11.8.2012. It is further brought to my notice that nothing is being done in the said challan.

A notice be issued to the said Court to send the

status report of the said challan with detailed reply as to why such a long date has been given when the challan against the other co-accused is already pending in this Court since long.

The said report be called for 17.7.2012.

Sd/-

M.S. Virdi

Sessions Judge, Ropar

10.7.2012.”

It was under the abovesaid wholly unwarranted situation created by the investigating as well as prosecuting agency of the respondent-State, that learned Illaqa Magistrate exceeded her jurisdiction, passed the impugned order dated 12.07.2012 (Annexure P-19), while registering and accepting the same supplementary challan under Section 173 (8) Cr.P.C., which had already been rejected by her predecessor Illaqa Magistrate. The impugned order dated 12.07.2012 (Annexure P-19), reads as under: -

“State Vs. Rajbir Singh and others.

12.07.2012 Present: APP for the State.

File put up today in pursuance of Endst No.1738 dated 10.07.2012 of the office of learned District & Sessions Judge, Rupnagar. It has been intimated that supplementary challan qua same occurrence was presented in the Court of undersigned under Section 173 (8) Cr.P.C. against 21 accused. Report of Ahlmad seen. It be registered. When the challan was presented it was submitted that it was presented against the accused who were neither named in the FIR nor were arrested and the earlier

supplementary challan was returned by the ld. Predecessor of this Court. Against the said order revision petition was preferred and the same to be placed on record. Consequently, police file was requisitioned and the long date was granted due to intervening summer vacations. Even on the date fixed police file was not produced. However, trial of the co-accused is already pending in the Court of ld. Sessions Judge, Rupnagar.

1. Supplementary challan has been presented under Sections 302, 307, 326, 452, 427, 379, 201, 211, 191, 192, 193, 194, 195, 195A, 196, 199, 200, 212, 213, 216, 217, 218, 203, 220, 221, 222, 225-A and 120-B, 511, 148, 149 IPC and 25/27/54/59 Arms Act PS Kharar. Record perused. In view of the serious nature of the allegations against the accused, their presence is ordered to be procured through issuance of non-bailable warrant for 19.07.2012. Status report regarding the same be sent to the ld. Sessions Judge, Rupnagar in reply to the endorsement No.1738 dated 10.07.2012.

Sd/- (Rashmi Sharma)

Sub Divisional Judicial

Magistrate, Kharar”

In view of what has been discussed hereinabove, three important questions of law that arise for consideration of this Court are: -

- (i) Whether the investigating agency has conducted only the further investigation or re-investigation and it had no jurisdiction to conduct fresh or re-investigation without

prior permission of the Court?

- (ii) Whether the learned trial Magistrate had exceeded her jurisdiction, while passing the abovesaid impugned order dated 12.07.2012 accepting the supplementary challan under Section 173 (8) Cr.P.C.?
- (iii) Whether this impugned order dated 12.07.2012 amounts to review of the earlier order dated 10.12.2011 (Annexure P-15)?

After giving anxious consideration to the peculiar fact situation obtaining in the present case, relevant statutory provisions and the judicial precedents, this Court is of the considered view that the answer to the questions posed hereinabove is and has to be in favour of the petitioners. It is held that the investigating agency, as a matter of fact, conducted not the further investigation but it was altogether a fresh and re-investigation and that too, without the prior permission of the Court. Thus, the investigating agency exceeded its jurisdiction, proceeded on a wholly misconceived and perverse approach, because of which the impugned second supplementary challan under Section 173 (8) Cr.P.C. cannot be sustained. Similarly, the impugned order dated 12.07.2012 (Annexure P-19) passed by learned Illaqa Magistrate amounts to review of the earlier order dated 10.12.2011 (Annexure P-15) which was not permissible in law, therefore, impugned order dated 12.07.2012 (Annexure P-19) is an order without jurisdiction which cannot be sustained.

The impugned second supplementary challan under Section 173 (8) Cr.P.C. dated 30.09.2011 (Annexure P-14) as well as the impugned order

dated 12.07.2012 (Annexure P-19) passed by learned Illaqa Magistrate, Kharar are not only factually incorrect and legally misconceived but the same are without jurisdiction as well, which makes interesting reading. Taking the impugned supplementary challan under Section 173 (8) Cr.P.C. first, a bare perusal of the same would show that all the investigating officers including the Senior Superintendent of Police and more members of the Rajbir Singh's faction was sought to be made the accused, total being 21 persons including six persons who were the accused earlier as well.

However, this impugned supplementary challan sought to give clean chit to 11 accused from the faction of Kiranbir Singh Kang, who were the accused for the murder of one member of Rajbir Singh's faction. As per this impugned supplementary challan, it were the members of Rajbir Singh's faction who were sought to be made the accused for both the murders. Now the question that arises is, as to whether still the impugned supplementary challan (Annexure P-14) can be said to be based on only further investigation. The answer is an emphatic no and it is held that the impugned supplementary challan under Section 173 (8) Cr.P.C. (Annexure P-14) was certainly based on a fresh and re-investigation.

Admittedly the investigating agency never sought permission of the Court before conducting the fresh investigation. It is not in dispute and has also been fairly conceded by learned Senior Counsel for respondent No.2 that if the investigating agency was intending to conduct a re-investigation, prior permission of the Court was mandatory, because without such permission of the Court, the investigating agency would have no jurisdiction to conduct the fresh investigation. Having said that, this Court feels no

hesitation to conclude that once the impugned supplementary challan under Section 173 (8) Cr.P.C. has been found based on a clear-cut fresh and re-investigation and that too without prior permission of the Court, the action was clearly without jurisdiction and the same cannot be sustained.

Coming to the impugned order dated 12.07.2012 passed by learned Illaqa Magistrate at Annexure P-19, a bare perusal of the said order would show that there was not even a passing reference of the earlier order dated 10.12.2011 (Annexure P-15), whereby the same very supplementary challan had already been rejected by the learned Illaqa Magistrate. The impugned order also does not refer to the order dated 04.04.2012 (Annexure P-16) whereby revision filed by the respondent-State against abovesaid order dated 10.12.2011 (Annexure P-15) had already been dismissed as withdrawn, for the reasons best known to the respondent-State. In this view of the matter, it can be safely concluded that the impugned order dated 12.07.2012 (Annexure P-19) passed by the learned Illaqa Magistrate clearly amounts to review, which was not permissible in law, therefore, the learned Illaqa Magistrate exceeded his jurisdiction, while passing the impugned order and the same cannot be sustained, because the learned Illaqa Magistrate was not having any power of review.

It seems that as if the learned Illaqa Magistrate was not at all concerned with the earlier orders dated 10.12.2011 (Annexure P-15) and also the order dated 04.04.2012 (Annexure P-16), whereby the respondent-State had withdrawn its revision petition against the order dated 10.12.2011. Till the order dated 10.12.2011 passed by the learned Illaqa Magistrate, rejecting the same supplementary challan under Section 173 (8) Cr.P.C., was not set

aside by the Court of competent jurisdiction, the learned Illaqa Magistrate was not at all competent to pass the impugned order dated 12.07.2012 (Annexure P-19) and the same cannot be sustained, for this reason also.

The abovesaid view taken by this Court on all the three questions of law, referred to hereinabove, also finds support from the judgments relied upon by learned Senior Counsel for the petitioner(s) and in addition thereto from the following judgments: -

1. *State of Punjab Vs. Central Bureau of Investigation and others, 2011 (9) SCC 182. (SC)*
2. *Vinay Tyagi Vs. Irshad Ali @ Deepak and others, 2013 (5) SCC 762. (SC)*

After having a detailed discussion of the case law on the subject, the Hon'ble Supreme Court in **Vinay Tyagi's** case (supra) had the occasion to deal with the ambit and scope of further investigation as well as fresh or de novo or re-investigation. The relevant observations made by the Hon'ble Supreme Court in paras 13 to 16 & 18 of its judgment in **Vinay Tyagi's** case (supra), which can be gainfully followed in the present case, read as under: -

“Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds :

(i) Initial Investigation.

(ii) Further Investigation.

(iii) Fresh or de novo or re-investigation.

The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a ‘further investigation’. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of

further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of

the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'. In the case of Sidhartha Vashisht v. State (NCT of Delhi) [(2010) 6 SCC 1], the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case

of Gudalure M.J. Cherian & Ors. v. Union of India & Ors. [(1992) 1 SCC 397], this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of R.S. Sodhi, Advocate v. State of U.P. [1994 SCC Supp. (1) 142], where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression 'ordinarily' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. 'Ordinarily' excludes extra- ordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct 'fresh investigation' and even transfer cases to courts of higher jurisdiction which may pass such directions.

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Next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct 'further investigation' or 'fresh investigation'. As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct 'fresh' or 'de novo' investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is, filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223]; Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413], Nirmal Singh Kahlon v State of Punjab & Ors. [(2009) 1 SCC 441]; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [(2009) 6 SCC 332]; and Babubhai v. State of Gujarat [(2010) 12 SCC 254]."

Similar was the view taken by the Hon'ble Supreme Court in **K.**

Chandrasekhar's case (supra).

So far as the judgments relied upon by learned Senior Counsel for respondent No.2 are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments in **A.S. Peter's** case (supra) and **Rama Chaudhary's** case (supra), none of them has

been found to be of any help to the respondents, being distinguishable on facts. Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In fact, ratio of the judgment in **Rama Chaudhary's** case (supra) goes against the respondents and in favour of the petitioners. Observations made by the Hon'ble Supreme Court in para 9 & 10 of the judgment in **Rama Chaudhary's** case (supra), read as under: -

“The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

From a plain reading of Sub-section (2) and Sub-section (8) of Section 173, it is evident that even after submission of police report under Sub-section (2) on completion of investigation, the police has a right to "further" investigation under Sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is

additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation."

So far as the fact situation of the present case is concerned, the impugned supplementary challan under Section 173 (8) Cr.P.C. has been found based on not only further investigation but on a fresh and de novo or re-investigation, which clearly runs counter to the very scheme of the Code of Criminal Procedure. Investigating agency cannot be permitted to blow hot and cold in the same breath, changing its stand from time to time, as per its own suitability.

The argument raised by learned Senior Counsel for the respondent that this Court has granted implied consent to the investigating agency for conducting even the fresh investigation, is only to be noted to be rejected, being a wholly misplaced argument. It is so said because the investigating agency was duty bound to seek prior permission of the learned Court of competent jurisdiction to conduct fresh, de novo or re-investigation. Any post-facto observations made by the Court, and that too in altogether different context, would be of no help to the investigating agency to justify its action without jurisdiction.

In fact what to talk of seeking prior permission of the court,

investigating agency kept the learned Court (s) in total dark in this regard, because no Court was ever taken into confidence on this issue, at any relevant point of time. On the other hand, the investigating agency as well as the prosecuting agency of the respondent-State have been found playing hide and seek with the Courts as well, sometimes by withholding the material fact from the notice of the Court and at other time making a factually incorrect and misleading statement so as to get favourable orders.

Such kind of action is neither expected from the investigating or prosecuting agency of the State nor it behove them to misconduct themselves to such an extent that the very credibility of these agencies of the State is shattered. It is so said because the investigating agency as well as the prosecuting agency of the State are very important agencies who play substantial role in the justice delivery system and are expected to conduct themselves impartially, fairly and diligently. However, both these agencies of the respondent-State have miserably failed in their duty in the present case. This was the reason that the impugned supplementary challan under Section 173 (8) Cr.P.C. has been found to be the result of an action without jurisdiction and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that petitioners have been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. All these petitions deserve to be accepted, so as to prevent any further abuse of process of Court and also to secure the ends of justice.

Consequently, impugned supplementary challan under Section 173 (8) Cr.P.C. in every case, as well as the impugned order dated 12.07.2012 passed by the learned Illaqa Magistrate, registering/accepting the supplementary challan in every case, are hereby ordered to be quashed.

Resultantly, with the abovesaid observations made, all these six petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

28.10.2015
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